Acting Executive

4 October 1950

Legal Staff

"Home Leave" for Foreign National Employees.

STATINTL

Part I. Introduction.

[redacted]

Part II. The Philippine Case.

1. In 1948, the Chairman of the Philippine War Damage Commission was faced with a problem similar to that now facing [redacted] The Commission had several employees with contracts calling for two years at foreign duty stations. At the end of the two-year period, the Commission became desirous of providing an incentive for those employees to renew their agreements and remain with the Commission. STATINTL

2. The Commission's proposal was to allow those employees and their families to travel to and from their places of actual residence in the United States at government expense and to take annual leave while there. In consideration of this, the Commission proposed renewal of the contract of each employee before he left the foreign duty station.

3. This proposal was submitted to the Comptroller General for a decision with a citation of Section 7 of Public Law 600, 60 Stat. 806, 808, which, in effect, provided:

> Appropriations shall be available for travel expenses of new employees and their immediate families from places of actual residence at time of appointment to places of employment outside the continental United States, and for such expenses on return of employees from

their posts of duty outside the continental United States to the places of their actual residence at time of assignment of duty outside the United States.

4. While the above provision permitted payment of travel expenses to and from a post of duty outside the continental United States, it did not specifically authorize home leave, not even for resident citizens of the United States.

5. However, under this statute, the Comptroller General approved the Commission's proposal. 28 Comp. Gen. 168 (14 Oct. 1948). In so doing, it may reasonably be said that he in effect authorized "home leave," although his specific authorization was for travel expenses for the employees and their families.

6. There are three factors in the Philippine case which deserve emphasis because of their similarity to the facts in the [redacted] problem: STATINTL

a. The employees were working under a contract agreement with the United States.

b. The employees had agreed to serve at a post outside the continental United States.

c. The Government had agreed to pay the return transportation of such employees upon completion of the agreed period of service.

Part III. The Hawaiian Case.

1. Earlier, in 1946, the Navy Department had submitted an almost identical proposal to the Comptroller General. The Department had hired several persons from the continental United States for employment in Hawaii, under agreements whereby each employee would remain in Hawaii eighteen months and then be returned to the mainland at Government expense.

2. Such agreements were made under the following statutory provisions:

> "The Secretary of the Navy is authorized to pay the costs of transportation of civilian employees to places of duty in the Naval establishment outside the continental United States, or in Alaska, and return, upon relief therefrom, to the places at which they were engaged or from which they were transferred to such duty. . . . ." (57 Stat. 61).

3. The Navy Department found it desirable to retain the services of these employees, and was prepared to sign new agreements with each employee. However, the Department said it would be preferable to enter into a new contract before each employee's return to the mainland, without a separation, and to pay transportation to and from the mainland.

4. The Comptroller General's decision was that such employees "may be returned to the United States at Government expense without the necessity of separating them from the service and thereafter may be returned to the foreign station

under a renewal of the prior agreement for additional periods of 18 months." (Unpublished decision of 11 July 1946, B-58788).

5. The three factors of similarity between the Philippine case and [redacted] STATSPEC problem are also applicable here. (See Part II, paragraph 6).

Part IV. The Mexican Case.

1. A third decision of the Comptroller General, which at first blush seems contrary to the Philippine and Hawaiian cases, can be distinguished.

2. The Department of Agriculture had instituted a Foot and Mouth Disease Eradication Program in Mexico, and had assigned certain career employees to duty there. Employees assigned to such duties generally understood they would not be required to remain outside the country longer than from twelve to eighteen months. After a lapse of more than two years, many employees requested to be returned to the United States at Government expense either for duty or for the purpose of taking leave.

3. The Secretary of Agriculture submitted the problem to the Comptroller General, pointing out the moral obligation of the Department not to repudiate its understood policy of returning transferred employees after a certain period, and emphasizing that administrative authority to return employees for leave purposes would result in increased efficiency for the Government, as well as aid in the recruitment and retention of career employees to carry out the Department's foreign programs.

4. The Secretary of Agriculture relied on Section 7 of Public Law 600 in submitting his proposal.

5. The Comptroller General said there was nothing in Section 7 which would permit the return of such employees to the United States at Government expense for purposes of taking leave. However, in view of the Department's prior policy authorizing such transportation, together with the fact that many employees concerned accepted foreign assignments with the understanding that such a policy was still in effect, the Comptroller General agreed to interpose no objection to the continuation of the practice for the purpose of fulfilling any existing commitments. With respect to any future assignments or transfers, the Comptroller General indicated he would not authorize return travel and transportation expenses. 29 Comp. Gen. 157 (6 Oct. 1949).

6. In view of the apparent conflict between these three decisions, the following factual distinctions must be made:

a. In the Mexican case, the Department of Agriculture employees were career personnel who had been assigned to Mexico. They had no contracts of employment, as such. Mexico simply was a post of duty for them.

b. In the Mexican case, the tenure of employment had not ended. Each employee would remain with the Department of Agriculture, even upon his return to the United States.

Part V. Public Law 110.

1. The solution to our problem is found in an application of Public Law 110.

a. Public Law 110 provides for home leave for residents of the United States or its territories and possessions at time of employment. Section 5(a)(3)(A). This Section does not specifically provide for home leave for nonresidents of the United States or its territories and possessions, and therefore is not the best provision upon which to base our conclusion.

b. Public Law 110 provides for travel expenses for an employee and his family when proceeding to or returning from his post of duty. Section 5(a)(1)(A) and (B). Payments of such expenses are not limited to residents of the United States or its territories or possessions. Here we find the key to the solution of the ADO's problem.

2. In regard to travel expenses, Public Laws 110 and 600 are almost identical as far as our problem is concerned. Both authorize travel expenses to and from a post of duty. Since the Comptroller General (in the Philippine and Hawaiian cases) permitted travel expenses to the United States and return under Public Law 600, it is reasonable to conclude he would approve travel expenses in regard to the ADO's proposal. The factual situations and statutory provisions are so similar that any contrary conclusion would be illogical, inasmuch as the Mexican case can be distinguished.

3. The above reasoning is, of course, dependent upon the legislature's reason for not authorizing home leave for nonresidents under Public Law 110. An analysis of the legislative history of Section 5(a)(3)(A) indicates the question of home leave for nonresidents was not raised in the hearings before Congress. Apparently such leave was not included simply because the need for it was not evident. It is significant, as far as our problem is concerned, that there is no record of legislative opposition to such leave.

Conclusions

1. In view of the decision of the Comptroller General in the Philippine and Hawaiian cases, the similarity of the [redacted] problem to those in the aforementioned cases, and the similarity of Public Laws 110 and 600, there is no apparent necessity for submitting this to the Comptroller General for his approval. STATINTL

2. In carrying out the ADO's proposal, it would be advisable for CIA to renew the prior agreement of each employee affected, without the necessity of first separating him from CIA and entering into a new employment contract. This process was recommended by the Comptroller General in the Philippine and Hawaiian cases.

3. While the effect of the ADO's proposal would be to grant "home leave," it would seem advisable to refrain from the use of this term. The reasons for this are two: The absence of a provision for home leave for foreign nationals

in Public Law 110; the absence of the term "home leave" in the decisions of the Comptroller General in the Philippine and Hawaiian cases. Since the Comptroller General in these cases authorized "travel expenses," it would be safer for CIA to follow his terminology.

4. In accord with the ADO's proposal, we believe payment of such travel expenses should be limited to those cases where employees have satisfactorily executed two-year contracts and have at least thirty days' accrued annual leave.

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